

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MINNESOTA

3 -----  
4 Michelle MacDonald Shimota,

5 Plaintiff,

6  
7 vs.

Court No. 15-cv-1590 (JRT/FLN)

8  
9 Bob Wegner, et. al,

10 Defendants.  
11 -----

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13  
14  
15  
16 -----  
17 DEPOSITION OF

18 DEPUTY SHERIFF TIMOTHY GONDER  
19 -----

20  
21  
22  
23  
24  
25 Taken November 30, 2016

By Ann Marie Holland, CSR

EXHIBIT

tabbies  
2

1 A. Yes.

2 Q. Who was with you at the time?

3 A. Sergeant Melton.

4 Q. Okay. I'm just trying to get an idea of  
5 the dynamics here.

6 Was Melton the person who was proactive in  
7 terms of what was happening with Ms. MacDonald or were  
8 you the person who was doing those kinds of activities?

9 A. If you give me specific instances and ask  
10 me who was in charge of a specific instance, I can do it  
11 that way.

12 BY MR. PADDEN:

13 Q. Let's do it this way then, who walked up to  
14 her and said, "We've got to take you out of the  
15 courtroom"? Was that you or Melton?

16 A. I believe it was Sergeant Melton.

17 Q. Okay. Did you say anything at that time,  
18 sir?

19 A. Not that I recall.

20 Q. So Melton was the one doing the talking,  
21 correct, at that time?

22 A. I believe so.

23 Q. Okay. Do you know how it was -- was a  
24 decision made who would do the talking or was it just  
25 something that happened? Could you describe that for

1 me, please?

2 A. It is most likely just something that  
3 happened.

4 Q. So it was you and Melton that escorted her  
5 out of the courtroom, correct?

6 A. I believe it was just the two of us.

7 Q. Okay. And where did you take her, sir?

8 A. To the upper level bailiff station holding  
9 area.

10 Q. Did she at that time get put into a holding  
11 cell so-to-speak or the holding cell so-to-speak?

12 A. No.

13 Q. Alright. We will get back to that.

14 Have you ever arrested an attorney before,  
15 sir, before Ms. MacDonald?

16 A. I don't believe it has ever been made known  
17 to me if their occupation was an attorney, but I guess  
18 it's possible.

19 Q. Okay. Had you ever been involved either  
20 directly or assisting with the issuing of a citation to  
21 an attorney at any time before September 12th, 2013?

22 A. Specifically as it relates to a courthouse  
23 or in general?

24 Q. That's a good point. Let me clarify that.  
25 Issuing a citation to an attorney for something that

1 Q. Do you remember what courtroom you were in  
2 when -- well, strike that.

3 Ms. MacDonald took a picture of you,  
4 correct?

5 A. Correct.

6 Q. And in what courtroom was that in, sir?

7 A. I believe it was 1-F.

8 Q. Okay. And when you say, "upper level" --  
9 did you say, "upper level bail station"?

10 A. Bailiff.

11 Q. Bailiff station?

12 A. Correct.

13 Q. That's the second floor, correct?

14 A. Correct.

15 Q. And when the picture was taken of you,  
16 was any other member of the Dakota County Sheriff's  
17 Department in the courtroom?

18 A. Taken of me?

19 Q. Yes.

20 A. No.

21 Q. Okay. You recall a picture being taken of  
22 you, correct?

23 A. I do.

24 Q. Okay. Were you looking at Ms. MacDonald  
25 when she took the picture?

1 A. I don't recall.

2 Q. Did she give you advance notice that she  
3 was taking a picture of you?

4 A. No.

5 Q. Did she say why she was taking a picture of  
6 you at any time?

7 A. Yes.

8 Q. Okay. What did she say?

9 A. She told me she was keeping her own record  
10 of events in the courtroom.

11 Q. When she took the picture of you was the  
12 judge in the courtroom?

13 A. No.

14 Q. Was court in session so-to-speak?

15 A. Yes.

16 Q. Tell me what you mean by that, court is  
17 "in session."

18 I just asked you the question, "Was court  
19 in session?" How did you interpret that?

20 A. The calendar had been called for the day.  
21 The case had already begun is my understanding; there  
22 had already been testimony. There was some sort of  
23 short recess. And I am assuming that court would have  
24 continued throughout the day in that manner.

25 Q. So that's how you describe court being in

1           A.    -- prior to her arriving at the upper level  
2   bailiff station area.

3           Q.    Alright. Thank you, sir.

4                   Do you recall what day of the week  
5   September 12, 2013 was?

6           A.    I do not.

7           Q.    Okay. Were you disciplined at all for the  
8   circumstances of what happened on September 12th, 2013  
9   and September 13th, 2013?

10          A.    No.

11          Q.    To your knowledge was there an internal  
12   investigation?

13          A.    No.

14          Q.    Okay. Who made the decision that she had  
15   to stay in jail overnight?

16          A.    Sergeant Melton.

17          Q.    Okay. Who made the decision to take a  
18   mugshot of her?

19          A.    The Dakota County Jail.

20          Q.    Okay. Do you know specifically which  
21   person in the jail?

22          A.    I do not.

23          Q.    Okay. Do you know who made the decision to  
24   put her in the cell that she was in in the jail?

25          A.    As far as specifically which area of the

1 jail she would be held in, no, I do not recall who made  
2 the decision as to where she would end up eventually.

3 Q. But that wasn't your decision?

4 A. No, sir.

5 Q. Okay. What time did your work shift begin  
6 on September 12th, 2013, sir?

7 A. Oh, I would have to say around 8:00 in the  
8 morning.

9 Q. Okay. Do you recall what time your workday  
10 ended that day, sir?

11 A. At the courthouse? I would have gotten  
12 done, oh, sometime around 4:30 maybe.

13 Q. Okay. And did you then go home for the  
14 day?

15 A. I did not.

16 Q. Okay. Were you involved at all with any of  
17 the events that occurred after Ms. MacDonald was put  
18 into the jail?

19 A. Yes.

20 Q. Okay. So you were still with her at that  
21 time, correct?

22 A. I was not with her, but I did work in the  
23 Dakota County Jail, correct.

24 Q. Okay. Do you recall how much of your  
25 workday that day was in the jail, sir?

1           A.    I do not recall specifically if I went  
2           straight to the jail after my courthouse shift ended or  
3           if there was a lapse in time, but I do know that it  
4           would have started no later than 6:00 p.m.

5           Q.    Okay.

6           A.    And I do not recall what time I left.

7           Q.    So did you work overtime that day?

8           A.    I did.

9           Q.    Okay. Why was that?

10          A.    The jail at the time was short staffed.  
11          The Department of Corrections has minimum officer  
12          requirements based on the size of your jail. When  
13          the jail is not able to meet those minimum staffing  
14          requirements required by the Department of Corrections,  
15          they fill those spots with overtime, either with jail  
16          staff or licensed deputies.

17          Q.    Okay.

18          A.    On this day, I was working one of those  
19          shifts coincidentally in the jail that afternoon.

20          Q.    Okay. Fair enough.

21                        So the fact that you ended up working in  
22          the jail later that day had nothing to do with the fact  
23          that Ms. MacDonald was apparently going to be going into  
24          the jail, correct?

25          A.    It was determined days, if not a week



1 prior.

2 Q. Fair enough.

3 Did you consider a lawyer taking a picture  
4 of you in a courtroom a significant offense, sir?

5 MR. TIMMERMAN: Objection to the form  
6 of the question. The term "significant offense" is  
7 vague and ambiguous. You can answer, if you can.

8 THE WITNESS: I don't know what you  
9 mean necessarily by "significant."

10 BY MR. PADDEN:

11 Q. Was this really that big of a deal, sir?

12 A. I don't know if you are looking for a one  
13 to ten scale or if you just want to know in general is  
14 it the largest crime I have ever observed? I don't know  
15 what you are asking me.

16 Q. You know what, I think that's a fair  
17 response. How would you rate it on a scale of one to  
18 ten in terms of criminal offenses?

19 A. As far as at the courthouse, it would be a  
20 pretty significant offense. I mean it's something that  
21 typically doesn't happen, and when it does, it's  
22 something that we don't allow.

23 Q. Okay.

24 A. As far as a criminal offense that may occur  
25 on patrol, it may not be that significant, but then

1 speak to it now, but at the time it was separated into  
2 five areas. There are three smaller holding cells, one  
3 larger holding cell, and what we will refer to as an  
4 intake area.

5 Q. Okay.

6 A. Ms. MacDonald was brought into the intake  
7 area.

8 Q. And then what happened next?

9 A. That was when the continuation of the  
10 citation occurred.

11 Q. Okay. And then what happened next?

12 A. That was where, I believe it was Sergeant  
13 Melton and I, and I don't recall if there was anyone  
14 else involved, attempted to gain information from  
15 Ms. MacDonald to complete the citation.

16 Q. Okay. And then what happened?

17 A. After not giving us the information that  
18 was requested, I believe at some point she was seated  
19 in a holding cell.

20 Q. Okay. And what information was requested?

21 A. The full name, date of birth and an  
22 address.

23 Q. Okay. And she would not provide that?

24 A. And I'm not sure if a phone number was  
25 requested. And no, she would not.

1 Q. Alright. Did you know her name?

2 A. No.

3 Q. You had no idea who she was?

4 A. That's not 100 percent true either. I knew  
5 a name that she had used, I also knew several others.

6 Q. Okay. So it's your testimony that when  
7 you -- did you ask the name or did Melton?

8 A. I don't recall.

9 Q. Okay. But, nonetheless, when her name was  
10 asked, is it your testimony that you did not know her  
11 name?

12 A. No, that's not my testimony. My testimony  
13 is I knew a name that she used. I had also learned that  
14 there was more than one that she had used. And I didn't  
15 know which one she used specifically, but I wasn't the  
16 one completing the citation either, so.

17 Q. Okay. Melton was?

18 A. Correct.

19 Q. I'm a little confused. I thought you said  
20 earlier that you gave answers to the effect that you  
21 barely knew who she was?

22 A. No, I didn't say I barely knew who she was.  
23 I knew who she was and I knew her name, but I had not  
24 specifically had any interactions with her prior to this  
25 day.

1           Q.    But as 9/12/13 it was your belief that this  
2 woman had been known by other names, and not just one  
3 name?

4           A.    It was I had heard, and I don't recall if  
5 it was during this process, when they asked -- when her  
6 name was asked of her, it was discovered that there was  
7 more than one name. I don't recall specifically when I  
8 learned that information.

9           Q.    Okay.

10          A.    But I do know that that was eventually  
11 given to me.

12          Q.    Okay. Did you and Sergeant Melton have the  
13 ability to ascertain what you were asking her from other  
14 sources? In other words, she wasn't providing it, but  
15 could you have gotten it from other sources?

16          A.    Partially, and more than one version of the  
17 same.

18          Q.    What does that mean?

19          A.    There would have been more than one  
20 address, there would have been more than one name, there  
21 most likely would have been more than one phone number.  
22 All of those things we would have needed to determine  
23 which one to use.

24          Q.    Okay. Was that done? Did you seek an  
25 alternative source to get that information at that time,

1 to ask Melton? Melton presumably would know that?

2 A. I would imagine so. I don't know that the  
3 citation was ever formally completed.

4 Q. Okay. Who made the decision to bring her  
5 back in the courtroom in a wheelchair?

6 A. Ms. MacDonald.

7 Q. Okay. But didn't you guys put her in a  
8 wheelchair?

9 A. Not specifically, no.

10 Q. How did she get into a wheelchair, sir?

11 A. We stood her up from where she was, she  
12 walked over to it and we sat her down.

13 Q. And who brought the wheelchair over?

14 A. I did.

15 Q. Okay. But who made the decision to put her  
16 in a wheelchair? I realize you may have physically  
17 brought the wheelchair, but who made the decision to  
18 bring the wheelchair into the mix?

19 A. I did.

20 Q. Okay. Why was that, sir?

21 A. Ms. MacDonald would not speak. When asked  
22 if she would go back to the courtroom, she would not  
23 answer our questions. When asked anything, she would  
24 not answer, so --

25 Q. Go ahead.

1           A.     She was -- I believe her presence was  
2 requested back in the courtroom by the judge. That the  
3 trial, or whatever the proceeding would be labeled as,  
4 needed to continue.

5                   When we, meaning I don't specifically know  
6 which one of us or all of us, had made comments to her  
7 about the fact that this needed to occur, there was no  
8 response.

9           Q.     Who was present at the time, sir, that that  
10 was going on?

11          A.     What's "that"?

12          Q.     The process of the decision to bring her  
13 back into the courtroom in a wheelchair and then you  
14 mentioned that the judge wanted her back in the  
15 courtroom, during that time frame?

16          A.     I don't recall who spoke to the judge, it  
17 was just made aware to me that the proceedings needed to  
18 continue.

19          Q.     Okay.

20          A.     So when that was related to Ms. MacDonald,  
21 she was nonresponsive. So our decision was in lieu of  
22 carrying her to the courtroom, a wheelchair could be  
23 used.

24          Q.     Who is the "our" part? You said "our."  
25 Who is the "our" part? That means more than one person

1 I presume?

2 A. I was there, involved in this situation.

3 Q. Sure.

4 A. It would have been myself, Sergeant Melton,  
5 Deputy Napper. I don't recall if there was anyone else.  
6 I'm sure there were other people involved, but I don't  
7 recall specifically.

8 Q. Okay. During that time frame how would you  
9 describe Ms. MacDonald's demeanor?

10 A. Nonresponsive.

11 Q. Did she seem upset?

12 A. Not terribly.

13 Q. Did she seem surprised?

14 A. Not terribly.

15 Q. Was she crying?

16 A. I don't recall. I don't believe she was.

17 Q. What's that?

18 A. I don't recall, but I don't believe she  
19 was.

20 Q. I mean was she like catatonic or what? I'm  
21 trying to get an idea of what her demeanor was. It  
22 sounds like she wasn't responding, so.

23 A. She would sit and stare blankly when  
24 questions were asked of her.

25 Q. Did she appear to be in a state of shock

1 from what you observed, sir?

2 A. No.

3 Q. Okay. Well, how would you describe her?

4 A. As someone sitting in a room, staring at  
5 you when questions were asked of her.

6 Q. Okay. Sergeant Melton went into the  
7 courtroom and was asked questions by the judge later.  
8 And I have a transcript of that. Okay? I want to ask  
9 you about this.

10 He said that, and I'm looking at Exhibit 4  
11 from my client's deposition, Counsel, that -- I will  
12 just read to you what it says.

13 And this is quoting Melton. "I went up to  
14 her during break and told her she was under arrest for  
15 the offense of Contempt of Court. Told her she was not  
16 going to be handcuffed, we just needed to get her name,  
17 date of birth and address for the ticket and she would  
18 be released. She had refused. She is still refusing."  
19 (Reviewing.)

20 Do you agree with what he said there, sir?

21 A. Yes.

22 Q. Was the offense of Contempt of Court the  
23 taking of the picture? Is that how it was labeled;  
24 Contempt of Court?

25 A. Well, for this offense, yes, sir.



1           Q.   Well, then he says, "I will give her a  
2           citation and she will be released. I will take her  
3           camera as evidence to see and verify that pictures were  
4           taken in the courtroom, but as soon as she gives me the  
5           information, she will be released." (Reading.)

6                     That's what Melton said. Do you agree with  
7           that?

8           A.   That's my understanding.

9           Q.   So is the only reason that Michelle  
10          MacDonald was not released was she refused to provide  
11          her name, date of birth and address for the ticket?  
12          Would you agree with that?

13          A.   Obstruction, yes, sir.

14          Q.   Okay. So her refusal to answer those three  
15          questions were not only why she was brought back in the  
16          courtroom in a wheelchair, but also why she was detained  
17          and held in the jail; is that correct?

18          A.   Correct.

19          Q.   Alright. So if she provided those three  
20          pieces of information, this whole situation doesn't  
21          continue, correct?

22          A.   Correct.

23          Q.   Okay. Are you familiar with the concept of  
24          "deescalation," sir? Do you know what that is?

25          A.   Yes.

1           We have these three, four, however many  
2 different names, we'll use a combination of any one of  
3 those, and tried to make a concession with her that way  
4 to deescalate the situation. We even, I think, agreed  
5 at one point, "Okay, we'll use your office phone number.  
6 An office number that we can pull off a court record  
7 somewhere or off of a prior arrest record," or something  
8 like that. We could use that information. We tried to  
9 have those conversations with her, but again, we were  
10 getting no response whatsoever.

11           Q.    When you said three or four names, how did  
12 you know she had three or four names?

13           A.    After trying to look up exactly who she  
14 was, we learned that there was more than one version of  
15 her name.

16           Q.    Okay. So somebody did look up from another  
17 source what her name was, correct?

18           A.    Correct. And I believe it was listed  
19 somewhere on the Court documents for that day, and that  
20 was different than a name that someone else had thought  
21 she had. So that was kind of, well, there is two now,  
22 and started looking at other things, and there was  
23 another one, and we learned that there was several  
24 different ways that she used her name.

25           Q.    Sure. But was that done with the

1 senior deputy in that group.

2 Q. Okay. Who was in that group that  
3 physically brought her out? Well, out was you and  
4 Melton, correct?

5 A. Correct. And Deputy Napper was there, but  
6 I believe he might have stayed in the courtroom as we  
7 walked her out.

8 Q. Okay. And who brought her back in?

9 A. I know I was there.

10 Q. Okay.

11 A. I know Sergeant Melton was there.

12 Q. Okay.

13 A. And I don't recall if Deputy Napper was  
14 there or not.

15 Q. Did you physically lift her up and put her  
16 in a wheelchair?

17 A. No.

18 Q. How did she get in the wheelchair?

19 A. So that's why I paused, because I'm trying  
20 to think of a way to word it aside from "picked up,"  
21 because "picked up" implies lifted as opposed to helped.

22 Q. So what was it?

23 A. She was seated on the stool in the holding  
24 cell. She was told that the proceedings needed to  
25 continue. Being the attorney of record in the

1 helped stand up.

2 Q. Okay.

3 A. At that point, once she was up and mobile,  
4 she was able to walk herself the few steps and be seated  
5 in the wheelchair.

6 Q. Okay. So she wasn't resistant, correct?

7 A. Passively.

8 Q. In what sense?

9 A. She was refusing to cooperate with the  
10 process unless she was physically assisted.

11 Q. When she was put in the wheelchair, was she  
12 then handcuffed?

13 A. She may have been handcuffed already. I  
14 don't recall.

15 Q. Okay. Was she handcuffed to a device that  
16 was around her waist?

17 A. I don't know.

18 Q. Well, when she went back in the courtroom,  
19 sir, was she handcuffed?

20 A. Yes.

21 Q. Why was she handcuffed?

22 A. She was in custody.

23 Q. Okay. So you put her in handcuffs because  
24 she was in custody?

25 A. Correct.

1 Q. For the crime of taking a picture of you in  
2 the courtroom?

3 A. No.

4 Q. What was the crime?

5 A. Misdemeanor Contempt of Court.

6 Q. Okay. So, you had handcuffed her because  
7 she had engaged in the crime of Contempt of Court,  
8 correct?

9 A. Correct.

10 Q. Okay. By taking the picture?

11 A. Yes. And I believe at this point we can  
12 argue the instruction (phonetic), but the initial  
13 offense would have been misdemeanor Contempt of Court,  
14 correct.

15 Q. Did you feel that she was a threat to  
16 anyone physically?

17 A. I don't recall.

18 Q. Deputy, did you really need handcuffs?

19 A. Yes.

20 Q. Why?

21 A. Policy.

22 Q. Okay. So that was the policy of the Dakota  
23 County Sheriff's Department. Tell me what that policy  
24 was, sir.

25 A. The Dakota County Sheriff's Office, when

1       they are in custody it's -- I should clarify whether it  
2       is a policy or standard operating procedure or if it's  
3       a type of order that we received directly from one of  
4       the captains or commanders in charge of detention  
5       services, but the standard practice, whether it's  
6       derived from policy or from a directive, is when someone  
7       is in custody, as a detainee of the Dakota County  
8       Sheriff's Office and they are appearing in a courtroom,  
9       they are handcuffed.

10           Q.     So was that decision made by you and/or  
11       Melton?

12           A.     That decision was made for both of us by  
13       the directive or the policy or the standard operating  
14       procedure.

15           Q.     But I mean you didn't have to go outside or  
16       nobody contacted somebody else to say if it's okay, you  
17       just did that kind of unilaterally, correct, on your  
18       own?

19           A.     We made the decision, either independently  
20       or together, the decision was made by us.

21           Q.     And Judge Knutson had nothing to do with  
22       that decision, correct?

23           A.     Not at all.

24           Q.     And Judge Knutson was not contacted at all  
25       for this process that was going on? In other words,

1 this decision to take her out of the courtroom, asking  
2 her questions, the citation, the decision to put her in  
3 a wheelchair, handcuff her, bringing her out into the  
4 courtroom, Judge Knutson had nothing to do with that  
5 ever, did he?

6 A. I don't believe I ever specifically  
7 contacted Judge Knutson about this at any point at all.

8 Q. Although, at some point, as you were kind  
9 enough to note earlier, Judge Knutson said, "We need her  
10 back in the courtroom," correct?

11 A. Someone had contacted Judge Knutson to let  
12 him know what events had taken place during the recess  
13 that had been taken in the courtroom, when Ms. MacDonald  
14 was escorted out of the courtroom, that was during a  
15 recess. Presumably court would begin at some time.

16 Q. Okay.

17 A. And as Ms. MacDonald is still upstairs with  
18 us, someone, whether it was Sergeant Melton or someone  
19 else, would have contacted either the judge or someone  
20 in the judge's courtroom or chambers to let him know  
21 it is possible this recess may be longer than he had  
22 initially intended when he left the courtroom.

23 Q. Okay.

24 A. I don't recall who did that and I don't  
25 recall who they contacted.

1 related to this specific event. That's the reason why  
2 I'm asking. Because you said it was a policy, and it's  
3 really, this specific event, the answer would be no.

4 Q. Okay. Was this event unique?

5 A. In what aspect?

6 Q. You've got a lawyer trying a case, who is  
7 now in a courtroom in a wheelchair and in handcuffs.  
8 Isn't that unique?

9 A. That is unique, yes.

10 Q. Was it the policy in a situation like that,  
11 if in fact a policy existed, for a member of your agency  
12 to be present in the courtroom with that person?

13 A. Again, there is no policies specifically  
14 regarding this incident or instances where attorneys are  
15 handcuffed and in wheelchairs in the courtroom.

16 What I can tell you is, if someone is in  
17 custody and detained by the Dakota County Sheriff's  
18 Office for whatever reason, and they are appearing in  
19 front of a judge in a courtroom, they will be handcuffed  
20 and there will be a deputy with them.

21 Does that help?

22 Q. It does. No, I appreciate that, sir.  
23 Thank you.

24 But the notion of a lawyer, being back in  
25 the courtroom, in a wheelchair and handcuffed, who was



1       trying a case earlier, that had never happened in your  
2       experience before, had it?

3           A.    Not in my experience, no.

4           Q.    Okay.  Were any of her personal possessions  
5       taken away from her before she came back into the  
6       courtroom other than the camera?

7           A.    Yes.

8           Q.    What?

9           A.    All of them.

10          Q.    Meaning jewelry?

11          A.    Well, your question was personal  
12       possessions; that's pretty broad, sir.  So, when we left  
13       the courtroom with her, the people she was with gathered  
14       all of her personal possessions out of the courtroom and  
15       left.

16          Q.    Why did they do that?

17          A.    I have essentially no idea.

18          Q.    Were they told to do that by any member of  
19       your agency?

20          A.    No.

21          Q.    Okay.  Are you sure of that?

22          A.    I'm one hundred percent positive.

23          Q.    Okay.  So they just left on their own,  
24       correct?

25          A.    I don't know why they left.  I just know

1 concerned, correct?

2 A. No.

3 Q. Well, what do you call it then?

4 A. The purpose of Ms. MacDonald leaving the  
5 courtroom was to issue her a citation and return her to  
6 the courtroom.

7 Q. Well, at some point was she considered to  
8 be in custody?

9 A. Yes.

10 Q. When?

11 A. When she refused to cooperate with the  
12 process and it became clear that continued detention was  
13 needed.

14 Q. Was that when her jewelry was taken?

15 A. Yes.

16 Q. And was that also when her cell phone was  
17 taken?

18 A. Yes.

19 Q. Was the intention at that time, sir, by  
20 taking her jewelry and her cell phone, for example, that  
21 when the court day was over, she was going to go to  
22 jail?

23 A. No.

24 Q. Okay. Well, when was the decision made  
25 that she was going to go to jail?

1           A.    When she continued to refuse to cooperate  
2 with the process.

3           Q.    And it was the answers to those three  
4 questions that she didn't provide?

5           A.    Correct.

6           Q.    I didn't ask you this question and I want  
7 to ask it.

8                   When you first took her out of the  
9 courtroom, you and Sergeant Melton, did she resist?

10          A.    I would say yes.

11          Q.    How?

12          A.    It was pretty clear she didn't want to go.  
13 She wanted to stay in the courtroom. She wanted other  
14 people to come with her, and that wasn't an option.  
15 So I believe at some point Sergeant Melton had to either  
16 put one hand on her arm or one on her back or her  
17 shoulder and guide her towards the door.

18                   I know at least at one time she turned back  
19 towards the people she was with and said something. I  
20 don't know if it was in relation to leaving or not  
21 wanting to leave or "Come with me." What was said, I  
22 don't know.

23          Q.    Did you tell her why she was being taken  
24 out of the courtroom?

25          A.    Yes.

1 Q. What did you say?

2 A. Oh, me specifically?

3 Q. Yes.

4 A. I don't know if it was me specifically. I  
5 believe it was Sergeant Melton.

6 Q. Did you hear what he said, sir?

7 A. I know that it was something to the effect  
8 of, "Our intention is to bring you back to our bailiff  
9 station, issue you a citation and return you promptly  
10 back down here." As far as the exact words, I do not  
11 recall, but I know that throughout this entire process,  
12 that was our initial intention and that would have been  
13 conveyed to her.

14 Q. When that was conveyed to her in the  
15 courtroom did she respond?

16 A. I don't recall what she said. Again,  
17 that's Sergeant Melton had a conversation with her, so  
18 any responses would have been directed to him.

19 Q. I know but you were standing right there,  
20 weren't you?

21 A. I don't know. Again, like I told you  
22 earlier, I don't know if we were shoulder to shoulder  
23 the entire day. I may have been standing over with some  
24 of the people she was with, I may have been over closer  
25 to the door that we were going to be leaving out of.

1 I don't recall where I was standing in relation to  
2 Sergeant Melton.

3 Q. Have you seen any video regarding this  
4 incident, sir?

5 A. I believe I watched the holding cell video  
6 from the upper level bailiff station area.

7 Q. Did you ever see the courtroom video?

8 A. No.

9 Q. Did you review any documents in preparation  
10 for your deposition today?

11 A. I reviewed my statement. I believe it's  
12 this document, my statement in the courtroom. I did  
13 review that, sir.

14 Q. The transcript?

15 A. Yes.

16 Q. And you didn't review your report because  
17 you never prepared one, right?

18 A. I read Sergeant Melton's report but I did  
19 not write one, no, sir.

20 Q. Fair enough. Who was it that looked at her  
21 camera?

22 A. I know I looked at it. I know Sergeant  
23 Melton looked at it.

24 Q. Did you have a warrant?

25 A. No.

1 Q. Why didn't you get a warrant?

2 A. Why didn't I get a warrant?

3 Q. Yes.

4 A. I wasn't the one dealing with the warrant  
5 and the permission for the search of the camera.

6 Q. Do you know why Melton didn't get a  
7 warrant?

8 A. He got a verbal Court Order instead.

9 Q. Okay. So the judge said, "Go ahead and  
10 look at the camera"?

11 A. That's not a fair representation. I wasn't  
12 there during that conversation, so I don't know the  
13 words that were said.

14 Q. So Melton would be the person to talk to  
15 about that?

16 A. Correct. He was the one that had the  
17 conversation with the judge.

18 Q. Okay. Were her glasses removed from her  
19 face, sir?

20 A. Yes.

21 Q. Why?

22 A. All property is removed from people when  
23 they are arrested and placed in jail.

24 Q. Were you aware of the fact that when she  
25 was going to be taken back into the courtroom that she

1 was going to have to continue to try her case?

2 A. Yes.

3 Q. But that didn't matter to you?

4 A. It's a pretty broad statement. Could you  
5 be a little more specific? Which parts?

6 Q. Well, she is apparently somebody who needs  
7 glasses, right?

8 A. I don't know if she needs glasses or not, I  
9 know she had them on her face.

10 Q. Okay. But when you brought her back in the  
11 courtroom was it your understanding that this attorney  
12 was going to continue to litigate her case or did you  
13 not have an understanding in that regard?

14 A. I did believe that she would need to  
15 continue. I believe it was, again, like I stated, at  
16 some point there was a conversation that someone had  
17 with the judge about her needing to come back in the  
18 courtroom and that her case needing to continue. So I  
19 did know that that was a possibility.

20 Q. But nobody in your agency asked the judge  
21 if it was okay to bring her in the courtroom without her  
22 glasses, right? That was a decision that you guys made,  
23 right?

24 A. No.

25 Q. Did you ever ask Ms. MacDonald, "Are you

1 going to need your glasses to be able to handle court in  
2 the afternoon?" Or is that a question that just never  
3 came up?

4 A. Yes.

5 Q. Who asked that question?

6 A. I did.

7 Q. When?

8 A. When we were bringing her down into the  
9 courtroom.

10 Q. Okay. And what was her response?

11 A. There was none.

12 Q. And, sir, you know that the surveillance  
13 system in the holding cell area and in the courtroom  
14 unfortunately doesn't have audio, correct? You can just  
15 see things, but you can't hear things, correct?

16 A. I don't know that I knew those areas had no  
17 audio, no, sir.

18 Q. As of 9/12/13 were you aware that the  
19 surveillance system in the courthouse did not have the  
20 ability to do audio? You could only see things where  
21 you were?

22 A. I know that I had watched camera footage  
23 from areas of the Government Center in the past and I  
24 have watched videos that have not had sound.

25 Q. Okay.



1 she?

2 A. We are probably about the same size,  
3 generally speaking.

4 Q. Okay. Did you have the discretion to let  
5 her go at the end of the court day?

6 A. It was not my decision.

7 Q. Whose was it?

8 A. Sergeant Melton's.

9 Q. Okay. When was she first given an  
10 opportunity to make a phone call, if you know?

11 A. I don't know if she ever asked me to make a  
12 phone call, so I don't know when that would have been  
13 provided to her.

14 Q. Did you ever ask her if she had a purse in  
15 the courtroom?

16 A. I know that there was some reference to a  
17 purse made in one of the -- in the transcript that I  
18 reviewed. I believe watching the footage back of her  
19 items being removed from the courtroom, when we noticed  
20 they were gone, someone went and watched that footage  
21 to determine how they had disappeared while we were  
22 upstairs with Ms. MacDonald. And I believe that was  
23 when it was noticed that her purse was one of the items  
24 removed.

25 Before that, watching that video and seeing

1 to the second floor, right?

2 A. Yes.

3 Q. Okay. So, is it possible for a judge then  
4 to have walked by during that process?

5 A. I'm sorry, when you asked me the question,  
6 I thought you were talking about the upper level bailiff  
7 station holding area and I apologize.

8 Q. It's okay.

9 A. Is it possible to have seen another judge  
10 in the secure hall that the judge's have access to while  
11 we walked her from one place to another? Yes.

12 Q. Did that happen?

13 A. Not that I recall.

14 Q. Okay. Fair enough.

15 Were you present when the mugshot was taken  
16 of Ms. MacDonald in the jail?

17 A. I was.

18 Q. Okay. Did anybody say anything about how  
19 she looked before that picture was taken?

20 A. No.

21 Q. Did anybody say words to the effect of,  
22 "You look beautiful," before that picture was taken?

23 A. No.

24 Q. Why was a mugshot taken of her?

25 A. She was in jail.

1 A. I have absolutely no idea.

2 Q. Okay. You have no idea what your weight  
3 is?

4 A. I know what my weight is now, but I don't  
5 know what it was then.

6 Q. What is your weight now, if you don't mind  
7 me asking?

8 A. I do.

9 Q. You do mind?

10 A. I do mind.

11 Q. You won't tell me what your weight is?

12 A. I don't know that I have to, but I can tell  
13 you that I am less than 200 and more than 150. It is  
14 somewhere in between there.

15 Q. Okay. Alright. What time did your work  
16 shift end that day, sir?

17 MR. TIMMERMAN: Could I just clarify?  
18 I think he has testified already about his work shift on  
19 9/12 at the courthouse. Are you talking about his work  
20 shift at the jail in the evening?

21 MR. PADDEN: Yes, jail. Thanks.

22 A. I don't know. It is all documented, but I  
23 specifically right now couldn't recall.

24 BY MR. PADDEN:

25 Q. But I think you said, sir, that you came

1 back at 6:00 or 6:30. I don't want to misquote you.

2 A. No, what I actually said was I don't recall  
3 if I went straight from the end of my shift around 4:30  
4 into the jail, but I said that I know for sure that I  
5 would have started by 6:00.

6 Q. Okay.

7 A. Because the shifts in the jail are 12-hour  
8 shifts and they run from 6:00 to 6:00. So I would have  
9 needed to be there for those minimums we discussed  
10 earlier, starting at 6:00. However, there are times  
11 when they are busy and I get down to the courthouse at  
12 4:30, and if I called in there and I said, to a  
13 supervisor in the jail, if they needed help right now,  
14 and they may say, "We do. You can either wait until 6:00  
15 or you can come now," again, I don't recall which one of  
16 those things took place, but I know I would have been  
17 there by 6:00.

18 I can tell you that I believe I worked the  
19 next day, so I would probably not have stayed much past  
20 1:00ish.

21 Q. Fair enough. It sounds like you had a long  
22 workday that day, correct?

23 A. Not terribly longer than on most days, no,  
24 sir.

25 Q. Okay. But when Judge Wermager issued an